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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/823,185
Filing Date: April 13, 2004
Appellant(s): OPRESCU-SURCOBE ET AL.

Jeffrey K. Jacobs
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed May 17, 2007 appealing from the Office
action mailed September 26, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2003/0157945	CHEN ET AL.	8-2003
2004/0198379	MAGEE ET AL.	10-2004
2004/0138834	BLACKETT	7-2004

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.
2. Claims 34-38 are rejected under 35 U.S.C. 102(e) as being anticipated by Chen et al. (hereinafter "Chen", US 2003/0157945).

Regarding claim 34, Chen discloses a method comprising:

- receiving, by a base station (BS) (fig. 4, "BSC") from network equipment (i.e., fig. 4, "PCF"), a short data delivery message (message 406 and paragraph 0049);
- signaling by the BS a mobile station (MS) in response to the short data delivery message (message 410 and paragraph 0051);
- sending by the BS a short data acknowledgment message to the network equipment indicating whether a response from the MS was received for the signaling of the MS by the BS (fig. 4, message 426 and paragraph 0053).

Regarding claim 35, Chen discloses all limitations within claim as described above. Chen further discloses wherein sending by the BS a short data acknowledgment message to the network equipment indicating whether a response from the MS was received comprises (fig. 4 and its descriptions):

in response to receiving by the BS an acknowledgment from the MS (message 422) in response to the signaling by the BS (message 420), sending by the BS a short data acknowledgment message to the network equipment indicating that a response from the MS was received (messages 424 & 426).

Regarding claim 36, Chen discloses all limitation within claim as described above. Chen further discloses wherein the short data delivery message comprises a message of a type that is used for conveying a small, limited amount of data to an MS (paragraphs 0046-0047).

Regarding claim 37, Chen discloses all limitation within claim as described above. Chen further discloses wherein the short data delivery message indicates a

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signaling location within which to signal the MS (paragraphs 0064-0065) and wherein signaling the MS in response to the short data delivery message comprises signaling the MS in the signaling location indicated (paragraphs 0064-0065).

Regarding claim 38, Chen discloses all limitation within claim as described above. Chen further discloses wherein the signaling location indicated comprises location information of a type from the group consisting of a cell ID, a base station ID, a list of cell IDs, and a location area code (LAC) (paragraphs 0057, 0058, and 0064).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 6, 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Magee et al. (hereinafter "Magee", US 2004/0198379 A1) in view of Blackett et al. (hereinafter "Blackett", US 2004/0138834).

Regarding claim 1, Magee discloses a method for enabling wireless presence-based services comprising:

- monitoring by a wireless communications network, messaging and messaging responses of a mobile station (MS), wherein the messaging and the messaging responses do not specify a presence state of the MS or a presence state change by the MS (figure 2, boxes 110 and 112);

- communicating, by the wireless communications network, the state change to a presence server (paragraph 0014).

Magee, however, does not specifically disclose:

- inferring, by the wireless communications network, a change in the presence state of the MS based upon the monitoring, wherein inferring comprises inferring the MS presence state has changed when the presence state of the MS indicates that the MS is present and messaging is detected that indicates MS activity from the group consisting of powering down, deregistering, entering an unavailable mode, handing off outside the wireless communication network, and involved in other communication.

In a similar endeavor, Blackett discloses a communication architecture for intelligent electronic devices. Blackett further discloses inferring, by the wireless communications network, a change in the presence state of the MS based upon the monitoring, wherein inferring comprises inferring the MS presence state has changed when the presence state of the MS indicates that the MS is present and messaging is detected that indicates MS activity (paragraph 0133).

Although the combination of Magee and Blackett does not specifically teach or suggest the group consisting of consisting of powering down, deregistering, entering an unavailable mode, handing off outside the wireless communication network, and involved in other communication when detecting the presence state change. However, it would have been obvious to one skilled that the presence/status of the user is changed based on different situations or factors. For instance, Blackett teaches or

suggests that the presence/status is changed when a pre-determined time has elapsed without any event (i.e., entering in idle mode as known in the art). See paragraph 0133. Hence, the list of activity consisting of powering down, deregistering, entering an unavailable mode, handing off outside the wireless communication network, and involved in other communication, as listed in the claim is an obvious variation and is known in the art because when the device is powering down, it means that the device is unavailable, and de-registered, etc...

Therefore, It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Magee with Blackett.

The motivation/suggestion for doing so would have been to determine and provide the current status of the device at any given time.

With further regard to claim 28, Magee and Blackett teach all limitations within claim 1 as described above. Magee also teaches or suggests wireless transceiver equipment adapted to receive messaging and messaging responses of a mobile station (MS) (figure 1, items 20 & 30); a wireless presence proxy, communicatively coupled to the wireless transceiver equipment (figure 1, item 50),

Regarding claim 6, it is obvious to one skilled in the art that the method of inferring comprises: inferring the MS presence state has changed when the presence state of the MS indicates that the MS is non-present and messaging is detected that indicates MS activity from the group consisting of powering up, registering, exiting an unavailable mode, handing off into the wireless communication network, and performing other communication because of the reasons rejected in claim 5.

5. Claims 2, 7-9, 12-14, 17, 27, 29-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Magee et al. (hereinafter "Magee", US 2004/0198379 A1) in view of Blackett et al. (hereinafter "Blackett", US 2004/0138834), and further in view of Chen et al. (hereinafter "Chen") (US 2003/0157945 A1).

Regarding claim 2, Magee and Blackett disclose the method of claim 1 as described above. Magee, however, fails to disclose the messaging responses comprise responses from the group consisting of a page response, a shod data burst (SDB) acknowledgment, a status response message, a short message service (SMS) acknowledgment, and a layer 2 acknowledgment.

In a similar endeavor, Chen discloses a method and apparatus for delivering information to a dormant target mobile. Chen further discloses, wherein the messaging responses comprise responses from the group consisting of a page response, a shod data burst (SDB) acknowledgment, a status response message, a short message service (SMS) acknowledgment, and a layer 2 acknowledgment (figures 4 & 5, and its descriptions).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the messaging responses in order to acknowledge whether or not the device is still in communication.

Regarding claim 7, Magee and Blackett the method of claim 1 as described above. Magee, however, fails to disclose signaling, by the wireless communications network, the MS with messaging to which the MS is required to respond. Chen discloses, further comprising:

- signaling, by the wireless communications network, the MS with messaging to which the MS is required to respond (paragraphs 0051 & 0052, and figure 4, item 414 or 422).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to signal by the wireless communication network in order to communicate with the MS.

Regarding claim 8, Magee, Blackett, and Chen disclose the method of claim 7 as described above. Chen further discloses, wherein messaging to which the MS is required to respond comprises messaging from the group consisting of a page, a short data burst (SDB) message, a status request message, and a short message service (SMS) message (figures 4 & 5, and its descriptions).

Regarding claims 9 and 33, Magee and Chen disclose the method of claim 7 as described above. Chen further discloses:

- wherein monitoring comprises maintaining last-known-location information for the MS based on the messaging and the messaging responses (paragraph 0064),
- wherein signaling the MS comprises signaling the MS in a group of at least one cell based on the last-known-location information for the MS (paragraph 0064).

Regarding claim 12, Magee and Chen disclose the method of claim 7 as described above. Chen further discloses, wherein monitoring comprises receiving, by

the wireless communications network, a messaging response in response to the signaling and wherein the method further comprises:

- inferring, by the wireless communications network, no change in a presence state of the MS based upon the monitoring, confirming, by the wireless communications network, the presence state to a presence server (paragraph 0064).

Regarding claims 13, 14, and 32, Magee, Blackett, and Chen disclose the method of claim 7 as described above. Chen further discloses:

- wherein monitoring passed after signaling the MS in which no response to the signaling has been received (paragraph 0064),
- wherein the no response within the period of time is a messaging response (paragraph 0064),
- wherein inferring comprises inferring a change in the presence state of the MS based upon the messaging response when the presence state of the MS indicates that the MS is present (paragraph 0064).

Regarding claim 17, Magee, Blackett, and Chen disclose the method of claim 7 as described above. Chen further discloses:

- wherein the wireless communications network comprises a control function and a base station (BS) (figure 5, boxes "BSC" and "MSC/VLR"),
- wherein the control function sends a signaling request message to the BS (figure 5, "Paging Request"),

- wherein signaling the MS comprises signaling by the BS in response to the signaling request message (figure 5, "Page Response").

Regarding claim 27, since the examiner rejects claim 1 because of the reasons above. It is also obvious to one skilled in the art that that the control function communicates and infers a change in the presence state of the MS based upon monitoring.

Regarding claim 29, Magee, and Blackett disclose the wireless communications network of claim 28 as described above. Magee, however, fails to disclose the presence server comprises a presence server from the group consisting of an instant messaging (IM) server and a push-to-talk (PTT) server.

In a similar endeavor, Chen discloses a method and apparatus for delivering information to a dormant target mobile. Chen further discloses, wherein the presence server comprises a presence server from the group consisting of an instant messaging (IM) server and a push-to-talk (PTT) server (paragraphs 0028-0032).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the presence server to communicate with other devices.

Regarding claim 30, Magee, and Blackett disclose the wireless communications network of claim 28 as described above. Magee, however, fails to disclose the messaging responses comprise responses from the group consisting of a page response, a short data burst (SDB) acknowledgment, a status response message, a short message service (SMS) acknowledgment, and a layer 2 acknowledgment. Chen discloses, wherein the messaging responses comprise responses from the group

consisting of a page response, a short data burst (SDB) acknowledgment, a status response message, a short message service (SMS) acknowledgment, and a layer 2 acknowledgment (figure 4 and its descriptions).

Regarding claim 31, Magee, and Blackett disclose the wireless communications network of claim 28 as described above. Magee, however, fails to disclose the wireless presence proxy is further adapted to signal via the wireless transceiver equipment the MS with messaging to which the MS is required to respond. Chen discloses, wherein the wireless presence proxy is further adapted to signal via the wireless transceiver equipment the MS with messaging to which the MS is required to respond (paragraphs 0051-0052).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the wireless presence proxy that is coupled with other devices to provide authorization for location based services.

(10) Response to Argument

GROUP 1 – Claims 34-38

The Appellants argue at page 11 that Chen does not teach or suggest sending by the base station (BS) a short data acknowledgment message to the network equipment indicating whether a response from the MS was received for the signaling of the mobile station (MS) by the BS. The Examiner respectfully disagrees.

As indicated in the final Office action, the Examiner once again invites the Appellants to refer to figure 4, message 426 of Chen for the illustration of this claimed

feature, and not message 408 as argued or asserted by the Appellants. Specifically, Chen teaches or suggests at paragraphs 0051-0053 two different ways or methods to send the packet data. That is, the base station controller (BSC) may send the packet data, e.g., in short data burst (SDB) form, directly to the mobile, or alternatively the BSC may use the ADDS page procedure. Therefore, when the BSC could not successfully send the SDB to the mobile in step 410, the BSC sends 414 the SDB data to the MSC in a BSC service request message, the MSC sends 418 an ADDS Page message to the BSC, **the BSC forwards 420 the SDB to the mobile, and an acknowledgment is sent 422 by the mobile after receiving the SDB from the BSC, and the BSC sends 426, an, e.g., A9-update-A8, message to the PCF to indicate successful transmission of the SDB to the mobile.** It is important to note that the message 422 is sent from MS to BSC to indicate that the SDB 420 was successfully sent from BSC to the MS. The message 426 is then sent from the BSC to the PCF to indicate the successful transmission of the SDB to the mobile. When the message 426 is sent from BSC to the PCF, it means that the response from MS was received for the signaling of the MS by the BS because the BSC already received a response 422 from MS and recognizes that the SDB 420 was successfully transmitted to the MS.

Hence, sending by the BSC a message 426, A9-update-A8, to the PCF indicating a response from MS was received from the signaling of the MS by the BS (i.e., an acknowledgement 422 that is sent from MS to BSC to indicate that the SDB 420 was successfully transmitted from BSC to MS) clearly reads on "sending by the base station (BS)⁶ a short data acknowledgment message to the network equipment indicating

whether a response from the MS was received for the signaling of the mobile station (MS) by the BS”.

Since Chen teaches or suggests all limitations of claimed invention as explained above; therefore, dependent claims 35-38 are also taught or suggested at least for the same reasons set forth above.

GROUP 2 – Claims 1 and 6

The Appellants assert at page 13 that the claims recite that the messaging and the messaging responses monitored do not specify a presence state of the MS or a presence state change by the MS. The Appellants further assert that Magee appears to teach away from this portion of the claim language with the MS determining its geographic location and then updating location server 60 with its location, i.e., specifying its location.

The Examiner firstly notes that it is the Examiner's position to broadly and reasonably interpret the claim language. It is important to note that one skilled in the art not only conceptualize “presence state” as existence, appearance, or attendance, but also broadly and reasonably interpret “presence state” as electrical on/off state, power on state, etc Therefore, even though Magee teaches or suggests specifying its location as stated by the Appellants; **Magee, however, does not specify the on/off state of the MS**.

The Examiner then relies on Blackett for the teaching of “inferring comprises inferring the MS presence state has changed when the presence state of the MS

indicates that the MS is present and messaging is detected that indicates MS activity from **the group consisting of** powering down, deregistering, entering an unavailable mode, handing off outside the wireless communication network, and involved in other communication.”

With regard to the claimed limitations just mentioned above, the Examiner notes that the “group consisting of all the elements” as recited within claims is the Markush-type claim in which the claims recite alternatives in format. However, for the purpose of examination, the Examiner only needs to show the teaching of only one element within the entire elements in the group.

With respect to the teaching of Blackett, the disclosure teaches or suggests at paragraph 0133 two types of events that trigger or infer a presence change: 1) if the client or user detects or has an event which may alter its status or presence then the presence or status is re-determined and 2) if a pre-determined time has elapsed without any event then the presence or status is determined again. Since the disclosure of Blackett teaches or suggests that the presence state has changed when the presence state of the MS indicates that the MS is present (i.e., the MS is on), and messaging is detected that indicates MS activity is elapsed, time-out, or idle (i.e., powering down). (Note: “powering down” means that instead of operating at the full power, the MS decides to conserve power by consuming less power or low the power consumption level by staying at the dormant state, or idle state.) Thus, it is clear to one skilled in the art to combine Magee in view of Blackett and arrive at the present invention so that the presence state of the MS could properly be determined.

GROUP 3 – Claim 28

Claim 28 is similarly recited as claim 1. Therefore, the Examiner maintains the rejections of claim 28 as explained in Group 2 above.

GROUP 4 – Claims 2, 7-9, 12-14, 17, 27 and 29-33

Since these claims depend either directly or indirectly on claims 1 and 28; therefore, the Examiner also maintains rejections of these claims at least for the same reasons set forth above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.


For the above reasons, it is believed that the rejections should be sustained.


Respectfully submitted,


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